REMARKS/ARGUMENTS

In response to the Office Action mailed September 8, 2004, the applicants respectfully request reconsideration. In the Office Action, claims 1-20 were rejected. By this amendment, claims 1, 7, 8 and 9 have been amended. Accordingly, claims 1-20 remain pending in this application.

Rejection Under 35 U.S.C. §112

Claims 1, 8, 9, 10 and 17 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. By this amendment, claims 1, 7, 8 and 9 have been amended. Applicants assert that the amendments to these claims render the rejection of claims 1, 8, 9 and 10 moot. Regarding claim 17, applicants assert that the claim is definite. The examiner's statement that the claim has "a similar problem with the lack of clarity and confusing claim language" as claim 1, does not help the applicants address the examiner's concerns, since the claims are different and contain different language.

Accordingly, applicants assert that claims 1, 8, 9, 10 and 17 are definite and that the rejection under 35 U.S.C. §112 should be withdrawn.

Rejection Under 35 U.S.C. §103

Claims 1, 14 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yanai in view of Ofek. The examiner states that Yanai teaches at least one first communication mechanism residing on both the first and second computers for facilitating communications between the first and second processes that are each used with backup or restore operations over the network and a second communication residing on both the first and second computers for facilitating communications between the first and second processes through the data storage system. The examiner states that Yanai fails to teach means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from the first or second communication mechanism and communicating over the network or through the data storage system based on the determination. However, the examiner states that Ofek teaches this and that it would have been obvious to combine

Yanai and Ofek to obtain the claimed invention. This rejection is traversed since there is no motivation in the references for the combination suggested by the examiner and, since each reference does not teach what the examiner states it teaches, the combination certainly cannot teach what the examiner states it teaches.

Yanai teaches a data storage system which automatically provides and maintains identical secondary data on a geographically remote secondary data storage device. The system includes a primary host computer 12 coupled to a primary data storage system 14 located in a first geographical location. The primary data storage system includes a primary data storage system controller 16 and a primary data storage device 20. The primary data storage controller 16 is coupled to a secondary data storage controller 44 via a high-speed communication link 40. The primary data storage controller 16 coordinates the copying of primary data to the secondary data storage system 46. See the Abstract.

Independent claim 1 recites a system having first and second processes residing on first and second computers, respectively, the first and second processes being used with at least one of backup and restore operations, wherein each of said first and said second computers are in communication with both a data storage system which stores data from at least said first and second computers and a network, the system comprising at least one first communication mechanism residing on each of the first and second computers for facilitating communications between the first and second processes that are each used with backup or restore operations over the network; a second communication mechanism residing on each of the first and second computers for facilitating communication between the first and second processes through the data storage system; and means, within the first and second processes, for allowing the first and second processes to determine whether a communication to be facilitated between the first and second processes is from the first communication mechanism or the second communication mechanism and, in response to determining that a communication is from the first communication mechanism, facilitating the communication between the first process and the second process over the network, and, in response to determining that a communication is from the second communication mechanism, facilitating the communication between the first process and the second process through the data storage system.

Not only does Yanai not teach what the examiner admits he does not teach, Yanai also does not teach what the examiner states that he teaches. First, Yanai does not teach a system having first and second processes residing on first and second computers, the first and second processes being used with at least one of backup and restore operations, wherein each of said first and said second computers are in communication with both a data storage system which stores data from at least said first and second computers and a network. The examiner has not pointed out the first and second computers taught by Yanai that have first and second processes or that are in communication with both a data storage system which stores data from at least said first and second computers and a network. The applicants cannot, and should not have to, guess at what elements of Yanai the examiner believes to be the first and second computers that have first and second processes or that are in communication with both a data storage system which stores data from at least said first and second computers and a network. Applicants respectfully request that the examiner point out what the examiner believes to be the first and second computers of Yanai, the first and second processes residing thereon and how these computers are in communication with both a data storage system which stores data from at least said first and second computers and a network.

Second, Yanai does not teach at least one first communication mechanism residing on each of the first and second computers for facilitating communications between the first and second processes that are each used with backup or restore operations over the network and a second communication mechanism residing on each of the first and second computers for facilitating communication between the first and second processes through the data storage system. Again, the applicants cannot, and should not have to, guess at what elements of Yanai the examiner believes to be the first and second communications mechanisms. Applicants respectfully request that the examiner point out what the examiner believes to be the first and second communication mechanisms residing on each of the first and second computers, how the first communication mechanism facilitates communications between the first and second processes over the network and how the second communication mechanism facilitates communication between the first and second processes through the data storage system.

Since Yanai does not teach first and second computers, first and second processes and first and second communication mechanisms on each of the first and second computers, Yanai cannot teach the elements relied upon by the examiner in support of the rejection of claim 1.

Accordingly, in addition to the features of claim 1 that the examiner admits Yanai does not teach, Yanai also does not teach the features of claim 1 for which the examiner relies on Yanai.

The examiner goes on to state that Ofek teaches means, within said first and second processes, for allowing said first and second processes to determine whether a communication from said first and second processes is from first or second communication mechanism, wherein, in response to determining if a communication is from said first communication mechanism then communicating over said network and in response to determining if a communication is from said first communication mechanism then communicating through said data storage system.

However, as stated by applicants in a previous response, Ofek in fact teaches a data network with a remote data facility for providing redundant data storage and for enabling concurrent access to the data for multiple purposes. The system includes two data processing systems 10, 11 interconnected by a communications link 12, such as fiber optic cables or high-speed data transmission lines (col. 4, lines 34-39). The local system 10 includes a data facility and processes transactions and other priority applications. Remote system 11 includes a data facility and normally operates to mirror the data stored in the data facility of the local system 10, although in an alternative mode, it can operate independently of the local system 10. Communications link 12 is the only link between the two data processing systems. There is no first communication mechanism and second communication mechanism, and therefore, there is no determination as to whether a communication is from a first or second communication mechanism. Furthermore, there is no teaching of communication over a network as well as communication through a data storage system between the two systems. The examiner has not specifically shown where any of these features are taught in the Ofek patent.

Accordingly, Ofek also does not teach what the examiner alleges he teaches and what the examiner relies upon to support the §103 rejection.

Therefore, since Yanai clearly does not teach the portions of independent claim 1 that the examiner alleges that he does and Ofek does not teach the portions of independent claim 1 that the examiner alleges that he does, the combination of Yanai and Ofek certainly cannot teach all of the features of the invention recited in independent claim 1.

Additionally, since neither reference teaches or suggests any of the features recited in independent claim 1, there certainly is no motivation to combine the references.

Based on the foregoing, the applicants assert that independent claim 1 is allowable over the combination of Yanai and Ofek and the at the rejection of independent claim 1 under 35 U.S.C. §103(a) should be withdrawn.

Claim 14 depends from independent claim 6 and is allowable for at least the same reasons as independent claim 6, as set forth below.

Independent claim 17 recites a system comprising a first computer having a first process residing thereon and a second computer having a second process residing thereon; the first and second processes including at least one of backup and restore operations; a first communication mechanism residing on each of the first and second computers for facilitating communications between the first and second processes over a network; and a second communication mechanism residing on each of the first and second computers for facilitating communications between the first and second processes through a data storage system. The first and second processes are configured to determine in which of the first communication mechanism and the second communication mechanism communications from either one of the first and second processes originate; and a communication that originates from the first communication mechanism is transmitted between the first and second processes over the network and a communication that originates from the second communication mechanism is transmitted between the first and second processes through the data storage system.

Applicants assert that independent claim 17 is also allowable over the combination of Yanai and Ofek.

First, Yanai does not teach first and second computers, first and second processes, a first communication mechanism for facilitating communications between the first and second processes over a network and a second communication mechanism for facilitating

communications between the first and second processes through a data storage system, where the first and second communication mechanisms reside on each of the first and second computers.

Second, Ofek does not teach first and second processes configured to determine in which of the first communication mechanism and the second communication mechanism communications from either one of the first and second processes originate; wherein a communication that originates from the first communication mechanism is transmitted between the first and second processes over the network and a communication that originates from the second communication mechanism is transmitted between the first and second processes through the data storage system.

As set forth above, Ofek teaches one connection between the local system 10 and the remote system 11. There is no second connection, and especially no second connection through a data storage system.

Therefore, even if the references were combined, the combination would not teach the invention recited in independent claim 17. Since Yanai clearly does not teach the portions of independent claim 17 that the examiner alleges that he does and Ofek does not teach the portions of independent claim 17 that the examiner alleges that he does, the combination of Yanai and Ofek certainly cannot teach all of the features of the invention recited in independent claim 17.

Based on the foregoing, the applicants assert that independent claim 17 is allowable over the combination of Yanai and Ofek and the at the rejection of independent claim 17 under 35 U.S.C. §103(a) should be withdrawn.

Claims 2-16 and 18-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Yanai in view of Ofek and further in view of Ji. This rejection is traversed. As set forth above, the combination of Yanai and Ofek is improper and does not teach the claimed invention. The addition of Ji does nothing to render the combination proper or sufficient to cause the invention to be unpatentable.

Claims 2-5 depend from independent claim 1 are is allowable for at least the same reasons as independent claim 1.

Regarding independent claim 6, the examiner states that Ji teaches establishing at

least one first connection over a network, between first and second processes that are each used with backup or restore operations and that are each residing on different computers, wherein said first connection is configured to be responsively used for communication over a network. The examiner further includes language in the rejection of independent claim 6 that is not part of independent claim 6, and as such, will not be addressed. The examiner states that Ji does not teach establishing, in parallel with establishing said at least one first connection, a second connection, through a data storage system, between said first and said second processes, wherein said second connection is configured to be responsively used for communication over said data storage system. However, the examiner states that Ofek teaches establishing, in parallel with establishing said at least one first connection, a second connection, through a data storage system, between said first and said second processes, wherein said second connection is configured to be responsively used for communication over said data storage system. Based on this, the examiner draws the conclusion that it would have been obvious to combine Ji and Ofek to modify Yanai to come up with the invention recited in independent claim 6. This rejection is traversed, since, as set forth above, the references do not teach or suggest the claimed invention, alone or in combination, and because there is no motivation to combine the references.

Applicants have already addressed this rejection in the response filed on February 2, 2004.

Independent claim 6 recites a method for assisting with backup and restore operations in a computer system, the method comprising:

(a)   establishing at least one first connection over a network, between first and second processes that are each used with at least one of backup and restore operations and that are each residing on different computers, wherein said first connection is configured to be responsively used for communication over a network; and

(b)   establishing, in parallel with establishing said at least one first connection, a second connection, through a data storage system, between said first and said second processes, wherein said second connection is configured to be responsively used for communication over said data storage system.

First, Ji does not teach first and second processes that are each used with backup

or restore operations. The Ji system is for the purpose of detecting and eliminating viruses on messages sent between and within networks. There is no teaching or suggestion in Ji that the system be used for backup and restore operations. In fact, because the Ji system is specifically directed to intercepting, analyzing and passing on messages in a network, the disclosure of Ji actually teaches against backing up data, since it is the purpose of the system to pass safe messages through the system and to eliminate unsafe messages. There is no need for saving the messages for longer than the time needed to analyze them, and certainly no need for backing up or restoring the messages.

Second, Ofek does not teach establishing, in parallel with establishing at least one first connection, a second connection, through a data storage system, between first and second processes, wherein the second connection is configured to be responsively used for communication over a data storage system. As set forth above, Ofek teaches <u>one connection</u> between the local system 10 and the remote system 11. There is no second connection, and especially no second connection <u>through a data storage system.</u>

Furthermore, even if the references taught what the examiner alleges that they teach, which applicants assert that they do not, there is no motivation to combine the references. As set forth above, the Ji system has nothing to do with the backup and restoration of data. In fact, Ji teaches against saving any of the messages that are passed through the system for any longer than is necessary to perform the detection process. Therefore, there would be no motivation to look to Ofek for the purpose of modifying the Ji system to include any of the teachings of Ofek.

Moreover, even if the references were combined, the combination would not teach the invention recited in independent claim 6. Since Ji clearly does not teach the portions of independent claim 6 that the examiner alleges that he does and Ofek does not teach the portions of independent claim 6 that the examiner alleges that he does, the combination of Yanai, Ofek and Ji certainly cannot teach all of the features of the invention recited in independent claim 6.

Based on the foregoing, the applicants assert that independent claim 6 is allowable over the combination of Yanai, Ofek and Ji and that the at the rejection of independent claim 6 under 35 U.S.C. §103(a) should be withdrawn.

Claims 7-14 depend from independent claim 6 and are allowable for at least the

same reasons as independent claim 6.

Regarding independent claim 15, the examiner only states that Yanai teaches identifying resources on a data storage device to be used in order to transfer information through said data storage device, and that the claim is rejected based on the same rationale applied to claims 6 and 13. This rejection is respectfully traversed, since, as set forth above, the references do not teach or suggest the claimed invention, alone or in combination, and because there is no motivation to combine the references.

Applicants have already addressed this rejection in the response filed on February 2, 2004.

Independent claim 15 recites a method for assisting with backup and restore operations in a computer system, the method comprising establishing a connection, over a network, between a first process and a second process that are each used with backup or restore operations and that are each residing on different computers; receiving information about a dynamically created communication mechanism over the established connection; establishing a second connection over the network, on the dynamically created communication mechanism, between said first and second processes; identifying resources on a data storage system to be used in order to transfer information through said data storage system; and establishing a connection between said first and second processes through said data storage system.

Since independent claim 15 is different from independent claim 6, the applicants are not quite sure how the examiner would have specifically applied the references to independent claim 15. However, even if the references taught what the examiner alleges that they teach, which the applicants assert that they do not; there is no motivation to combine the references. As set forth above, the Ji system has nothing to do with the backup and restoration of data. In fact, Ji teaches against saving any of the messages that are passed through the system for any longer than is necessary to perform the detection process. Therefore, there would be no motivation to look to Ofek for the purpose of modifying the Ji system to include any of the teachings of Ofek.

Moreover, even if the references were combined, the combination would not teach the invention recited in independent claim 15. Since Ji clearly does not teach the portions of independent claim 15 that it would seem the examiner alleges that he does

and Ofek does not teach the portions of independent claim 15 that it would seem the examiner alleges that he does, the combination of Yanai, Ofek and Ji certainly cannot teach all of the features of the invention recited in independent claim 15.

Based on the foregoing, the applicants assert that independent claim 15 is allowable over the combination of Yanai, Ofek and Ji and that the rejection of independent claim 15 under 35 U.S.C. §103(a) should be withdrawn.

Claim 16 depends from independent claim 15 and is allowable for at least the same reasons as independent claim 15.

Claims 18-20 depend from independent claim 17 and are allowable for at least the same reasons as independent claim 17.

Based on the foregoing amendments and remarks, the applicants assert that claims 1-20 are allowable over the prior art of record and respectfully request that a timely Notice of Allowance be issued in this application.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at 508.293.7835.

Please charge any fees occasioned by this submission to Deposit Account No. 05-0889.

Respectfully submitted,

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Date

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